STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of B.J. and G.H., Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

SHELLY MEJEUR-HOLCOMB,

Respondent-Appellant.

UNPUBLISHED
June 10, 2003

No. 242892
Kalamazoo Circuit Court
Family Division
LC No. 94-000080-NA

Before: Smolenski, P.J., and Cooper and Fort Hood, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order's terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j). We conditionally affirm the trial court's order and remand this matter for the purpose of complying with the notice provisions of the Indian Child Welfare Act (ICWA).

Respondent first argues that the trial court clearly erred in finding that the statutory grounds for termination were established. We disagree. The evidence established that respondent failed to provide proper care and custody for the children when she became addicted to crack cocaine, allowed drug users into the family home, and offered drugs to one of her children. In addition, with respect to her other child, respondent admitted that she had failed to properly provide for him in the past. The evidence also established that respondent would be unable to provide proper care and custody for the children within a reasonable time given the substantial services that have been provided to respondent over many years, her longstanding history of poor parenting, and the fact that respondent still tested positive for cocaine within weeks of the conclusion of the termination hearing. Therefore, the trial court did not clearly err in finding that MCL 712A.19b(3)(g) was established by clear and convincing evidence. MCR 5.974(I); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Because only one ground for termination is required, we need not address the trial court's findings with respect to MCL 712A.19b(3)(c)(i), (c)(ii), and (j).

Respondent also argues there was no evidence presented regarding the children's best interests. MCL 712A.19b(5) does not "impose any further burden of proof on the petitioner once

the petitioner has carried its burden of establishing one or more grounds for termination." *In re Trejo*, 462 Mich 341, 352; 612 NW2d 407 (2000). Therefore, respondent's argument is without merit. In any event, we find that the evidence did not show that termination of respondent's parental rights was clearly not in the children's best interests. MCL 712A.19b(5); *Trejo, supra* at 353.

Finally, respondent argues in her supplemental brief that this Court should remand this matter to the trial court because the trial court failed to inquire about her daughter's Indian ancestry during the preliminary hearing. We agree.

Respondent first raised the possibility of her daughter being an Indian child on appeal. However, this Court has held that the notice provisions of the ICWA are "mandatory, regardless of how late in the proceedings a child's possible Indian heritage is uncovered." *In re TM*, 245 Mich App 181, 188; 628 NW2d 570 (2001) (quotation omitted). In addition, we recognize that failure to comply with the requirements of the ICWA may invalidate proceedings terminating a parent's rights. 25 USC 1914; *In re TM, supra* at 187. *In re NEGP*, 245 Mich App 126, 131;626 NW2d 921 (2001).

MCR 5.965(B)(7) provides that the court "shall inquire if the child or parent is a registered member of any American Indian tribe or band, or if the child is eligible for such membership." The trial court failed to do so in this matter and respondent now alleges that her daughter is possibly an Indian child. This Court has held that where a respondent's parental rights have otherwise been properly terminated under Michigan law, but the petitioner and the trial court failed to comply with the ICWA's notice provisions, reversal is not necessarily required. *In re IEM*, 233 Mich App 438, 450; 592 NW2d 751 (1999). Instead, the remedy adopted in *IEM* was to "conditionally affirm the [trial] court's termination order" but remand the matter "so that the court and the FIA may provide proper notice to any interested tribe." *Id.* Here, as in *IEM* "the sole deficiency at this time is in notice and there has been no determination that the ICWA otherwise applies to this proceeding." *Id.* Therefore, we follow the remedy fashioned in *IEM, supra*, in this case.

Accordingly, if after proper notice pursuant to 25 USC 1912(a) and MCR 5.980 the tribe does not seek to intervene, or, after intervention, the trial court concludes that the ICWA does not apply, the original orders will stand. If the trial court does conclude that the ICWA applies, further proceedings consistent with the ICWA will be necessary.

We conditionally affirm the order terminating respondent's parental rights, but remand for the purpose of providing proper notice to any interested Indian tribe pursuant to the ICWA. We do not retain jurisdiction.

/s/ Michael R. Smolenski
/s/ Jessica R. Cooper
/s/ Karen M. Fort Hood